

BEFORE THE  
BOARD OF REGISTERED NURSING  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the First Amended  
Accusation and Second Petition to Revoke  
the Probation of:

GINA LYNN D'OTTAVIO  
aka GINA LYNN McKINNEY  
aka GINA LYNN DIX  
260 Marsalla Drive  
Folsom, CA 95630

Registered Nurse License No. 566415

Respondent.

Case No. 2005-82

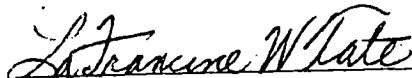
OAH No. 2008060634

**DECISION**

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Registered Nursing as its Decision in the above-entitled matter.

This Decision shall become effective on December 20, 2008.

IT IS SO ORDERED November 20, 2008.



President  
Board of Registered Nursing  
Department of Consumer Affairs  
State of California

BEFORE THE  
BOARD OF REGISTERED NURSING  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Petition to Revoke  
Probation Against:

GINA LYNN D'OTTAVIO  
aka GINA LYNN McKINNEY  
aka GINA LYNN DIX  
Folsom, California

Registered Nurse License No. 566415,

Respondent.

Case No. 2005-82

OAH No. 2008060634

**PROPOSED DECISION**

Administrative Law Judge Melissa G. Crowell, State of California, Office of Administrative Hearings, heard this matter in Oakland, California, on August 14, 2008.

Deputy Attorney General Rebecca M. Heinsteins represented complainant Ruth Ann Terry, M.P.H., R.N., Executive Officer of the Board of Registered Nursing.

Respondent Gina Lynn D'Ottavio appeared and represented herself.

The matter was submitted on August 14, 2008.

**SUMMARY**

Respondent's registered nurse license was placed on probation to the board in 2005. In this proceeding, complainant seeks to revoke respondent's probation for her failure to comply with a number of conditions of her probation.

**FACTUAL FINDINGS**

1. On April 25, 2000, the Board of Registered Nursing issued Registered Nurse License No. 566415 to respondent Gina Lynn D'Ottavio, also known as Gina Lynn McKinney and Gina Lynn Dix. The license will expire August 31, 2009, unless it is renewed.

2. In a prior disciplinary action, Case No. 2005-82, the board issued a decision effective July 18, 2005, revoking respondent's registered nurse license. The revocation was stayed, and respondent's license was placed on probation for three years on stated terms and conditions.

The discipline was based on admissions by respondent, in a stipulated settlement and disciplinary order, that she had used a controlled substance to a dangerous extent in violation of Business and Professions Code section 2762, subdivision (b), and that she had self-administered Vicodin in violation of Business and Professions Code section 2762, subdivision (a), thereby subjecting her license to discipline pursuant to Business and Professions Code section 2761, subdivision (a), for two separate acts of unprofessional conduct. With respect to her use of a controlled substance to a dangerous extent, respondent admitted to two very serious matters:

(a) From approximately September 15, 2000 to September 19, 2000, Respondent was hospitalized in the psychiatric unit at Good Samaritan Hospital . . . [and] was diagnosed with Acute Opiate (Vicodin) Induced Depression and Opiate (Vicodin) Dependence.

(b) On or about January 31, 2001, Respondent enrolled in the Board's drug diversion program. While in the Board's diversion program, Respondent admitted using Vicodin on or about November 4, 2002. On or about November 14, 2002, respondent was terminated from diversion as a public safety risk due to the relapse and other non-compliance.

3. Probation Condition 11 provides that if respondent violates the conditions of her probation, the board may, after giving respondent notice and an opportunity to be heard, set aside the stay order and impose the revocation of respondent's license.

Probation Condition 11 further provides that the filing of a petition to revoke probation during the period of probation extends the period of probation until the board has acted on the petition. Respondent's three-year probationary period commenced July 18, 2005. The petition to revoke probation was filed May 29, 2008. The filing of the petition to revoke probation therefore extended respondent's probation pending the board's determination of the petition to revoke.

#### First Cause: Submit Written Reports

4. Probation Condition 5 required respondent to submit quarterly written reports during the period of her probation. The reports are to be submitted within seven days of the close of each quarter. Respondent violated this condition by not timely filing quarterly reports for the last three quarters of 2007. Respondent ultimately submitted the three quarterly reports on February 7, 2008.

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## Second Cause: Function as a Registered Nurse

5. Probation Condition 6 required respondent during the period of probation to “engage in the practice of registered nursing in California for a minimum of 24 hours per week for 6 consecutive months or as determined by the Board.” Respondent violated this condition by failing to work in her licensed capacity for six consecutive months. Respondent worked in three nursing positions over the course of her probation, but none of the positions lasted six months.

## Third Cause: Complete a Nursing Course

6. Probation Condition 10 imposed on respondent the obligation to complete a nursing education course. It provides in relevant part:

Respondent, at her own expense, shall enroll and successfully complete a course(s) relevant to the practice of registered nursing no later than six months prior to the end of her probationary term. Respondent shall obtain prior approval from the Board before enrolling in the course(s).

Respondent violated this condition in that she failed to timely complete the nursing course. Respondent submitted proof of completion of an approved course in March 2008.

## Fourth Cause: Participate in Treatment/Rehabilitation Program

7. Probation Condition 14 required respondent to participate in a treatment/rehabilitation program for chemical dependency. This condition required, among other things, that respondent participate in a nurse support group as directed by her probation monitor:

Based on Board recommendation, each week Respondent shall be required to attend at least one, but no more than five 12-step recovery meetings or equivalent (e.g., Narcotics Anonymous, Alcoholics Anonymous, etc.) and a nurse support group as approved and directed by the Board. If a nurse support group is not available, an additional 12-step meeting or equivalent shall be added. Respondent shall submit dated and signed documentation confirming such attendance to the Board during the entire period of probation.

8. Respondent was directed by her probation monitor to attend two nurse support group meetings every month. Respondent did not provide verification of compliance with this provision of probation.

Fifth Cause: Submit to Tests and Samples

9. Probation Condition 16 required respondent to participate, at her own expense, in random biological fluid testing or a drug screening program. This condition provides in relevant part:

Respondent, at her expense, shall participate in a random, biological fluid testing or a drug screening program which the Board approves. The length of time and frequency will be subject to approval by the Board. Respondent is responsible for keeping the Board informed of Respondent's current telephone number at all times. Respondent shall also ensure that messages may be left at the telephone number when she is not available and ensure that reports are submitted directly by the testing agency to the Board, as directed. Any confirmed positive finding shall be reported immediately to the Board by the program and Respondent shall be considered in violation of probation.

10. The board's drug screening program is operated by Compass Vision. Under its program, respondent was required to call a designated telephone number each day to determine whether it was a required testing day. If it was, she was required to submit to a test that day. She was also required to keep a specified account balance with Compass Vision in order to pay for the cost of the testing.

11. Respondent violated Probation Condition 16 in the following ways:

- a. She failed to appear for drug testing on three days, May 15, August 7, and December 6, 2007.
- b. She failed to have sufficient balance in her Compass Vision account causing it to be placed on hold five times: August 21, 2006, September 7, 2006, October 26, 2006, November 14, 2006, and January 17, 2007.
- c. She failed to call Compass Vision on four days: February 5, 16, 21, and May 4, 2007.
- d. She submitted to one scheduled drug test 24 hours late.
- e. As of May 7, 2007, she has failed to call Compass Vision for drug testing at all.

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REGISTERED NURSING  
SACRAMENTO

#### Sixth Cause: Therapy

12. Probation Condition 18 requires respondent to participate in a therapy program. It provides in relevant part:

Respondent, at her expense, shall participate in an on-going counseling program until such time as the Board releases her from this requirement and only upon the recommendation of the counselor. Written progress reports from the counselor will be required at various intervals.

13. Respondent violated Probation Condition 18 in that she did not submit to the board verification of ongoing therapy or counseling.

#### Seventh Cause

14. Probation Condition 2 required respondent to fully comply with the terms of her probation to the board: It provides:

Respondent shall fully comply with the conditions of the Probation Program established by the Board and cooperate with representatives of the Board in its monitoring and investigation of the Respondent's compliance with the Board's Probation Program.

15. Respondent violated Probation Condition 2 in that she failed to comply with Probation Conditions 5, 6, 10, 14, 16 and 18.

#### Respondent's Evidence

16. Respondent is a single mother, who has been focusing her efforts on being a good mother to her children, and on her own mental and physical health. She says she has tried to comply with the terms of her probation to the best of her ability, but for a variety of reasons she has not been able to be successful in this regard.

Sometimes her inability was due to a misunderstanding on her part of her obligations. For example, she did not appreciate she had to complete the education course prior to six months before the end of her probation, even though it is clearly spelled out on the probationary order.

Sometimes she made assumptions regarding compliance, but she did not confirm their accuracy with her probation monitor. For example, she assumed that she would not be required to submit quarterly reports if she were off work due to disability. (Respondent says she was off work on disability from April 2007 to March 2008.) This is why she did not submit the three quarterly reports in 2007. But not only did respondent not confirm the

accuracy of her assumptions regarding her obligation to file quarterly reports, she never advised her probation monitor that she was off work due to disability until February 2008.

With respect to therapy, respondent says she has been in ongoing therapy since probation with various therapists and counselors. At hearing she provided a letter dated March 2008 from a Randy Mitchell, a chemical dependency counselor, which demonstrates one year of therapy. Mitchell further attests to respondent's efforts at recovery. But, respondent did not provide her probation monitor with documentation of ongoing therapy, which is what her probation required of her.

With respect to working as a nurse for six months, she left her first position because the facility could not provide her with the maximum level of supervision required by her probation. The second position she left before six months because she says that she needed to undergo major surgery and the facility would not hold the position for her. The third facility's inability to provide the level of supervision required by the terms of her probation also led her to leave before the end of six months.

With respect to drug testing, she did not explain why she simply stopped all testing in May 2007. With respect to the account being placed on hold at times, that occurred when she was not working and she was having financial difficulties.

17. Respondent has not worked as a nurse since her surgery and disability. She says that she located a position with Kaiser Permanente early in 2008, but lost the position due to the delay of the board's nurse consultant in approving it.

18. Respondent would like to return to work and requests that her probation be extended so she can do that.

## LEGAL CONCLUSIONS

1. By reason of the matters set forth in Factual Findings 4 through 15, it was established that respondent violated Probation Conditions 2, 5, 6, 10, 14, 16 and 18, of her probation. Cause exists to revoke respondent's probation and to reimpose the stayed discipline (revocation) imposed in Case No. 2005-82.

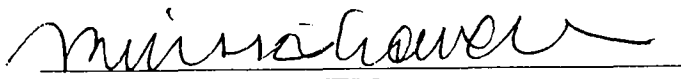
2. The question presented is whether respondent's probation should be extended as she requests, or whether her probation should be revoked as complainant requests. All evidence in mitigation has been considered. Respondent has many reasons for her inability to be successful on probation, but the result is the same, she has not been compliant with the terms of her probation. The probationary terms were developed by the board in order to ensure that respondent could practice nursing with safety to the public after her admissions to committing two serious acts of unprofessional conduct. Her performance on probation has not shown that her probation should be extended. Respondent appears to be earnest in her efforts to be a good mother and to take care of her own health and recovery, and for these things she is to be commended. But she had demonstrated far less earnestness in her

compliance with either the board's diversion program or the board's probationary program. While some of the violations are minor, the overall picture is a pattern of haphazard compliance without keeping the probation monitor apprised of her situation. With this track record, respondent has provided the board with little reason to believe that her performance on probation will improve in the future.

#### ORDER

The petition to revoke probation is granted, and probation is revoked. The stay of the revocation imposed in Case No. 2005-82 is lifted and the order of revocation of Registered Nurse License No. 566415 issued to respondent Gina Lynn D'Ottavio is imposed.

DATED: 9/15/08

  
MELISSA G. CROWELL  
Administrative Law Judge  
Office of Administrative Hearings



1 EDMUND G. BROWN JR., Attorney General  
of the State of California  
2 FRANK PACOE  
Supervising Deputy Attorney General  
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7 Attorneys for Complainant

8  
9 **BEFORE THE**  
**BOARD OF REGISTERED NURSING**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

12 In the Matter of Petition to Revoke Probation  
Against:

Case No. 2005-82

13 **GINA LYNN D'OTTAVIO,**  
14 **a.k.a. GINA LYNN MCKINNEY**  
**a.k.a. GINA LYNN DIX**  
15 260 Marsalla Drive  
Folsom, CA 95630

**PETITION TO REVOKE  
PROBATION**

16 California Registered Nurse License No. 566415

17  
18 Respondent.

19  
20 Complainant alleges:

21 **PARTIES**

- 22 1. Ruth Ann Terry, M.P.H., R.N. (Complainant) brings this Petition to  
23 Revoke Probation solely in her official capacity as the Executive Officer of the Board of  
24 Registered Nursing, Department of Consumer Affairs.
- 25 2. On or about April 25, 2000, the Board of Registered Nursing (Board)  
26 issued Registered Nurse License No. 566415 to Gina Lynn D'Ottavio, a.k.a. Gina Lynn  
27 McKinney, a.k.a. Gina Lynn Dix (Respondent). The license will expire on August 31, 2009,  
28 unless renewed.

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**PRIOR DISCIPLINE**

3. In a disciplinary action entitled "In the Matter of Accusation Against Gina Lynn Dix," Case No. 2005-82, the Board issued a decision, effective July 18, 2005, in which Respondent's Registered Nurse License was revoked. However, the revocation was stayed and Respondent's license was placed on probation for a period of three (3) years, with certain terms and conditions. A copy of the decision is attached as Exhibit A and is incorporated by reference.

**FIRST CAUSE TO REVOKE PROBATION**

**(Failed to Submit Written Reports)**

4. At all times after the effective date of Respondent's probation, Probation Condition No. 5 stated:

**Submit Written Reports.** Respondent, during the period of probation, shall submit or cause to be submitted such written reports/declarations and verifications of actions under penalty of perjury, as required by the Board. These reports/declarations shall contain statements relative to Respondent's compliance with all the conditions of the Board's Probation Program. Respondent shall immediately execute all release of information forms as required by the Board or its representatives. Respondent shall provide a copy of this Decision to the nursing regulatory agency in every state and territory in which she has a registered nurse license.

5. Respondent's probation is subject to revocation because she failed to comply with Probation Condition No. 5, referenced above, in that she failed to submit her Quarterly Reports for the following quarters:

- a. April through June, 2007;
- b. July through September, 2007;
- c. October through December, 2007.

**SECOND CAUSE TO REVOKE PROBATION**

**(Failed to Function as a Registered Nurse)**

6. At all times after the effective date of Respondent's probation, Probation Condition No. 6 stated:

**Function as a Registered Nurse.** Respondent, during the period of probation, shall engage in the practice of registered nursing in California for a minimum of 24 hours per week for 6 consecutive

1 months or as determined by the Board. For purposes of  
2 compliance with the section, "engage in the practice of registered  
3 nursing" may include, when approved by the Board, volunteer  
4 work as a registered nurse, or work in any non-direct patient care  
5 position that requires licensure as a registered nurse. The Board  
6 may require that advanced practice nurses engage in advanced  
7 practice nursing for a minimum of 24 hours per week for 6  
8 consecutive months or as determined by the Board. If Respondent  
9 has not complied with this condition during the probationary term,  
10 and Respondent has presented sufficient documentation of her  
11 good faith efforts to comply with this condition, and if no other  
12 conditions have been violated, the Board, in its discretion, may  
13 grant an extension of Respondent's probation period up to one year  
14 without further hearing in order to comply with this condition.  
15 During the one year extension, all original conditions of probation  
16 shall apply.

17 7. Respondent's probation is subject to revocation because she failed to  
18 comply with Probation Condition No. 6, referenced above, in that she failed to work in her  
19 license capacity for a minimum of 24 hours per week for 6 consecutive months.

### 20 **THIRD CAUSE TO REVOKE PROBATION**

#### 21 **(Failed to Complete Nursing Course)**

22 8. At all times after the effective date of Respondent's probation, Probation  
23 Condition No. 10 stated:

24 **Complete a Nursing Course(s).** Respondent, at her own expense, shall  
25 enroll and successfully complete a course(s) relevant to the practice of  
26 registered nursing no later than six months prior to the end of her  
27 probationary term. Respondent shall obtain prior approval from the  
28 Board before enrolling in the course(s). Respondent shall submit to the  
Board the original transcripts or certificates of completion for the above  
required course(s). The Board shall return the original documents to  
Respondent after photocopying them for its records.

9. Respondent's probation is subject to revocation because she failed to  
comply with Probation Condition No. 10, referenced above, in that she failed to complete the  
assigned coursework.

### **FOURTH CAUSE TO REVOKE PROBATION**

#### **(Failed to Participate in Treatment/Rehabilitation Program for Chemical Dependency)**

10. At all times after the effective date of Respondent's probation, Probation  
Condition No. 14 stated:

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1 **Participate in Treatment/Rehabilitation Program for Chemical**  
2 **Dependency.** Respondent, at her expense, shall successfully complete  
3 during the probationary period or shall have successfully completed  
4 prior to commencement of probation a Board-approved  
5 treatment/rehabilitation program of at least six months duration.  
6 As required, reports shall be submitted by the program on forms  
7 provided by the Board. If Respondent has not completed a  
8 Board-approved treatment/rehabilitation program prior to commencement  
9 of probation, Respondent, within 45 days from the effective date of the  
10 decision, shall be enrolled in a program. If a program is not successfully  
11 completed within the first nine months of probation, the Board shall  
12 consider Respondent in violation of probation. Based on Board  
13 recommendation, each week Respondent shall be required to attend  
14 at least one, but no more than five 12-step recovery meetings or  
15 equivalent (e.g., Narcotics Anonymous, Alcoholics Anonymous, etc.)  
16 and a nurse support group as approved and directed by the Board.  
17 If a nurse support group is not available, an additional 12-step meeting  
18 or equivalent shall be added. Respondent shall submit dated and  
19 signed documentation confirming such attendance to the Board during the entire  
20 period of probation. Respondent shall continue with the recovery plan  
21 recommended by the treatment/rehabilitation program or a licensed mental health  
22 examiner and/or other ongoing recovery groups.

23 11. Respondent's probation is subject to revocation because she failed to  
24 comply with Probation Condition No. 14, referenced above, in that she failed to attend two Nurse  
25 Support Group meetings each month.

### 26 **FIFTH CAUSE TO REVOKE PROBATION**

#### 27 **(Failed to Submit to Tests and Samples)**

28 12. At all times after the effective date of Respondent's probation, Probation  
Condition No. 16 stated:

**Submit to Tests and Samples.** Respondent, at her expense, shall  
participate in a random, biological fluid testing or a drug screening  
program which the Board approves. The length of time and frequency  
will be subject to approval by the Board. Respondent is responsible  
for keeping the Board informed of Respondent's current telephone  
number at all times. Respondent shall also ensure that messages  
may be left at the telephone number when she is not available and  
ensure that reports are submitted directly by the testing agency to the  
Board, as directed. Any confirmed positive finding shall be reported  
immediately to the Board by the program and Respondent shall be  
considered in violation of probation. In addition, Respondent, at  
any time during the period of probation, shall fully cooperate with the  
Board or any of its representatives, and shall, when requested, submit to  
such tests and samples as the Board or its representatives may require for the  
detection of alcohol, narcotics, hypnotics, dangerous drugs, or  
other controlled substances. If Respondent has a positive drug screen  
for any substance not legally authorized and not reported to the  
coordinating physician, nurse practitioner, or physician assistant, and the

1 Board files a petition to revoke probation or an accusation, the Board  
2 may suspend Respondent from practice pending the final decision on  
3 the petition to revoke probation or the accusation. This period of  
4 suspension will not apply to the reduction of this probationary time  
5 period. If Respondent fails to participate in a random, biological fluid  
6 testing or drug screening program within the specified time frame,  
7 Respondent shall immediately cease practice and shall not resume  
8 practice until notified by the Board. After taking into account  
9 documented evidence of mitigation, if the Board files a petition to revoke  
10 probation or an accusation, the Board may suspend Respondent from  
11 practice pending the final decision on the petition to revoke probation or  
12 the accusation. This period of suspension will not apply to the reduction  
13 of this probationary time period.

14 13. Respondent's probation is subject to revocation because she failed to  
15 comply with Probation Condition No. 16, as follows:

16 a. Respondent failed to comply with the required drug screening program by  
17 failing to appear for drug screening on or about May 15, 2006, August 7, 2006, and December 6,  
18 2006.

19 b. Respondent failed to comply with the required drug screening program by  
20 putting her account on hold with Compass Vision on or about August 21, 2006, September 7,  
21 2006, October 26, 2006, November 14, 2006, and January 17, 2007.

22 c. Respondent failed to comply with the required drug screening program by  
23 failing to call in to Compass Vision on or about February 5, 2007, February 16, 2007, February  
24 21, 2007, and May 4, 2007.

25 d. Respondent failed to comply with the required drug screening program in  
26 that she was 24 hours late for testing on March 6, 2007.

27 e. Respondent failed to comply with the required drug screening program in  
28 that, as of May 4, 2007, she has failed to call Compass Vision to schedule testing.

### **SIXTH CAUSE TO REVOKE PROBATION**

#### **(Failed to Complete Therapy)**

14. At all times after the effective date of Respondent's probation, Probation  
Condition No. 18 stated:

**Therapy or Counseling Program.** Respondent, at her expense, shall  
participate in an on-going counseling program until such time as the Board  
releases her from this requirement and only upon the recommendation

1 of the counselor. Written progress reports from the counselor will  
2 be required at various intervals.

3 15. Respondent's probation is subject to revocation because she failed to  
4 comply with Probation Condition No. 18, referenced above, in that she failed to submit  
5 verification of on-going therapy or counseling.

6 **SEVENTH CAUSE TO REVOKE PROBATION**

7 **(Failed to Fully Comply With Probation Program)**

8 16. At all times after the effective date of Respondent's probation, Probation  
9 Condition No. 2 stated:

10 **Comply with the Board's Probation Program.** Respondent shall fully  
11 comply with the conditions of the Probation Program established by the  
12 Board and cooperate with representatives of the Board in its monitoring  
13 and investigation of the Respondent's compliance with the Board's Probation  
14 Program. Respondent shall inform the Board in writing within no more  
15 than 15 days of any address change and shall at all times maintain an active,  
16 current license status with the Board, including during any period of  
17 suspension. Upon successful completion of probation, Respondent's  
18 license shall be full restored.

19 17. Respondent's probation is subject to revocation because she failed to  
20 comply with Conditions No. 5, No. 6, No. 10, No. 14, No. 16, and No. 18, as set forth above.

21 **PRAYER**

22 WHEREFORE, Complainant requests that a hearing be held on the matters herein  
23 alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

24 1. Revoking the probation that was granted by the Board of Registered  
25 Nursing in Accusation No. 2005-82 and imposing the disciplinary order that was stayed thereby  
26 revoking Registered Nurse License No. 566415 issued to Gina Lynn D'Ottavio, a.k.a. Gina Lynn  
27 McKinney, a.k.a. Gina Lynn Dix;

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2. Taking such other and further action as deemed necessary and proper.

DATED: 5/29/08

Rebecca Kenstein for :  
RUTH ANN TERRY, M.P.H., R.N.  
Executive Officer  
Board of Registered Nursing  
Department of Consumer Affairs  
State of California  
Complainant

BEFORE THE  
BOARD OF REGISTERED NURSING  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

Gina Lynn Dix  
6627 E. Juniper Ave  
Scottsdale, AZ 85254

Registered Nurse License No. 566415

Respondent

Case No. 2005-82

**DECISION AND ORDER**

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Registered Nursing, Department of Consumer Affairs, as it's Decision in the above entitled matter.

This Decision shall become effective on July 18, 2005.

IT IS SO ORDERED June 17, 2005.

*Sandra R. Erickson*

President  
Board of Registered Nursing  
Department of Consumer Affairs  
State of California



1 BILL LOCKYER, Attorney General  
of the State of California  
2 REBECCA HEINSTEIN, State Bar No. 173202  
Deputy Attorney General  
3 California Department of Justice  
455 Golden Gate Avenue, Suite 11000  
4 San Francisco, CA 94102-7004  
Telephone: (415) 703-5604  
5 Facsimile: (415) 703-5480  
6 Attorneys for Complainant

7 **BEFORE THE**  
8 **BOARD OF REGISTERED NURSING**  
9 **DEPARTMENT OF CONSUMER AFFAIRS**  
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. 2005-82

12 **GINA LYNN DIX,**  
13 a.k.a. **GINA D'OCTTAVIO**  
a.k.a. **GINA LYNN MCKINNEY**  
6627 E. Juniper Avenue  
Scottsdale, Arizona 85254

OAH No. N2004120048

**STIPULATED SETTLEMENT AND  
DISCIPLINARY ORDER**

14 Registered Nurse License No. 566415

15 Respondent.

16  
17  
18 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the  
19 above-entitled proceedings that the following matters are true:

20 **PARTIES**

21 1. Ruth Ann Terry, M.P.H., R.N. (Complainant) is the Executive Officer of  
22 the Board of Registered Nursing. She brought this action solely in her official capacity and is  
23 represented in this matter by Bill Lockyer, Attorney General of the State of California, by  
24 Rebecca Heinstein, Deputy Attorney General.

25 2. Respondent Gina Lynn Dix, a.k.a Gina D'Octtavio, a.k.a Gina Lynn  
26 McKinney (Respondent) is representing herself in this proceeding and has chosen not to exercise  
27 her right to be represented by counsel.

28 ///

1                   3.       On or about April 25, 2000, the Board of Registered Nursing issued  
2 Registered Nurse License No. 566415 to Gina Lynn Dix, a.k.a Gina D'Ottavio, a.k.a Gina Lynn  
3 McKinney (Respondent). The license was in full force and effect at all times relevant to the  
4 charges brought in Accusation No. 2005-82 and will expire on August 31, 2005, unless renewed.

5                                   **JURISDICTION**

6                   4.       Accusation No. 2005-82 was filed before the Board of Registered Nursing  
7 ("Board"), Department of Consumer Affairs, and is currently pending against Respondent. The  
8 Accusation and all other statutorily required documents were properly served on Respondent on  
9 November 12, 2004. Respondent timely filed her Notice of Defense contesting the Accusation.  
10 A copy of Accusation No. 2005-82 is attached as exhibit A and incorporated herein by reference.

11                                   **ADVISEMENT AND WAIVERS**

12                   5.       Respondent has carefully read, and understands the charges and allegations  
13 in Accusation No. 2005-82. Respondent has also carefully read, and understands the effects of  
14 this Stipulated Settlement and Disciplinary Order.

15                   6.       Respondent is fully aware of her legal rights in this matter, including the  
16 right to a hearing on the charges and allegations in the Accusation, the right to be represented by  
17 counsel at her own expense; the right to confront and cross-examine the witnesses against her;  
18 the right to present evidence and to testify on her own behalf; the right to the issuance of  
19 subpoenas to compel the attendance of witnesses and the production of documents; the right to  
20 reconsideration and court review of an adverse decision; and all other rights accorded by the  
21 California Administrative Procedure Act and other applicable laws.

22                   7.       Respondent voluntarily, knowingly, and intelligently waives and gives up  
23 each and every right set forth above.

24                                   **CULPABILITY**

25                   8.       Respondent admits the truth of each and every charge and allegation in  
26 Accusation No. 2005-82.

27                   9.       Respondent agrees that her Registered Nurse License is subject to  
28 discipline and she agrees to be bound by the Board's imposition of discipline as set forth in the

1 Disciplinary Order below.

2 **RESERVATION**

3 10. The admissions made by Respondent herein are only for the purposes of  
4 this proceeding, or any other proceedings in which the Board or other professional licensing  
5 agency is involved, and shall not be admissible in any other criminal or civil proceeding.

6 **CONTINGENCY**

7 11. The parties understand and agree that facsimile copies of this Stipulated  
8 Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same  
9 force and effect as the originals.

10 12. In consideration of the foregoing admissions and stipulations, the parties  
11 agree that the Board may, without further notice or formal proceeding, issue and enter the  
12 following Disciplinary Order:

13 **DISCIPLINARY ORDER**

14 IT IS HEREBY ORDERED that Registered Nurse License No. 566415 issued to  
15 Respondent Gina Lynn Dix, a.k.a Gina D'Ottavio, a.k.a Gina Lynn McKinney (Respondent) is  
16 revoked. However, the revocation is stayed and Respondent is placed on probation for three (3)  
17 years on the following terms and conditions.

18 **Severability Clause.** Each condition of probation contained herein is a separate  
19 and distinct condition. If any condition of this Order, or any application thereof, is declared  
20 unenforceable in whole, in part, or to any extent, the remainder of this Order, and all other  
21 applications thereof, shall not be affected. Each condition of this Order shall separately be valid  
22 and enforceable to the fullest extent permitted by law.

23 1. **Obey All Laws.** Respondent shall obey all federal, state and local laws.  
24 A full and detailed account of any and all violations of law shall be reported by Respondent to  
25 the Board in writing within seventy-two (72) hours of occurrence. To permit monitoring of  
26 compliance with this condition, Respondent shall submit completed fingerprint forms and  
27 fingerprint fees within 45 days of the effective date of the decision, unless previously submitted  
28 as part of the licensure application process.

1                   **Criminal Court Orders:** If Respondent is under criminal court orders, including  
2 probation or parole, and the order is violated, this shall be deemed a violation of these probation  
3 conditions, and may result in the filing of an accusation and/or petition to revoke probation.

4                   2.       **Comply with the Board's Probation Program.** Respondent shall fully  
5 comply with the conditions of the Probation Program established by the Board and cooperate  
6 with representatives of the Board in its monitoring and investigation of the Respondent's  
7 compliance with the Board's Probation Program. Respondent shall inform the Board in writing  
8 within no more than 15 days of any address change and shall at all times maintain an active,  
9 current license status with the Board, including during any period of suspension.

10                   Upon successful completion of probation, Respondent's license shall be fully  
11 restored.

12                   3.       **Report in Person.** Respondent, during the period of probation, shall  
13 appear in person at interviews/meetings as directed by the Board or its designated  
14 representatives.

15                   4.       **Residency, Practice, or Licensure Outside of State.** Periods of  
16 residency or practice as a registered nurse outside of California shall not apply toward a reduction  
17 of this probation time period. Respondent's probation is tolled, if and when she resides outside  
18 of California. Respondent must provide written notice to the Board within 15 days of any change  
19 of residency or practice outside the state, and within 30 days prior to re-establishing residency or  
20 returning to practice in this state.

21                   Respondent shall provide a list of all states and territories where she has ever been  
22 licensed as a registered nurse, vocational nurse, or practical nurse. Respondent shall further  
23 provide information regarding the status of each license and any changes in such license status  
24 during the term of probation. Respondent shall inform the Board if she applies for or obtains a  
25 new nursing license during the term of probation.

26                   5.       **Submit Written Reports.** Respondent, during the period of probation,  
27 shall submit or cause to be submitted such written reports/declarations and verification of actions  
28 under penalty of perjury, as required by the Board. These reports/declarations shall contain

1 statements relative to Respondent's compliance with all the conditions of the Board's Probation  
2 Program. Respondent shall immediately execute all release of information forms as may be  
3 required by the Board or its representatives.

4 Respondent shall provide a copy of this Decision to the nursing regulatory agency  
5 in every state and territory in which she has a registered nurse license.

6 **6. Function as a Registered Nurse.** Respondent, during the period of  
7 probation, shall engage in the practice of registered nursing in California for a minimum of 24  
8 hours per week for 6 consecutive months or as determined by the Board.

9 For purposes of compliance with the section, "engage in the practice of registered  
10 nursing" may include, when approved by the Board, volunteer work as a registered nurse, or  
11 work in any non-direct patient care position that requires licensure as a registered nurse.

12 The Board may require that advanced practice nurses engage in advanced practice  
13 nursing for a minimum of 24 hours per week for 6 consecutive months or as determined by the  
14 Board.

15 If Respondent has not complied with this condition during the probationary term,  
16 and Respondent has presented sufficient documentation of her good faith efforts to comply with  
17 this condition, and if no other conditions have been violated, the Board, in its discretion, may  
18 grant an extension of Respondent's probation period up to one year without further hearing in  
19 order to comply with this condition. During the one year extension, all original conditions of  
20 probation shall apply.

21 **7. Employment Approval and Reporting Requirements.** Respondent  
22 shall obtain prior approval from the Board before commencing or continuing any employment,  
23 paid or voluntary, as a registered nurse. Respondent shall cause to be submitted to the Board all  
24 performance evaluations and other employment related reports as a registered nurse upon request  
25 of the Board.

26 Respondent shall provide a copy of this Decision to her employer and immediate  
27 supervisors prior to commencement of any nursing or other health care related employment.

28 ///

1 In addition to the above, Respondent shall notify the Board in writing within  
2 seventy-two (72) hours after she obtains any nursing or other health care related employment.  
3 Respondent shall notify the Board in writing within seventy-two (72) hours after she is  
4 terminated or separated, regardless of cause, from any nursing, or other health care related  
5 employment with a full explanation of the circumstances surrounding the termination or  
6 separation.

7 8. **Supervision.** Respondent shall obtain prior approval from the Board  
8 regarding Respondent's level of supervision and/or collaboration before commencing or  
9 continuing any employment as a registered nurse, or education and training that includes patient  
10 care.

11 Respondent shall practice only under the direct supervision of a registered nurse  
12 in good standing (no current discipline) with the Board of Registered Nursing, unless alternative  
13 methods of supervision and/or collaboration (e.g., with an advanced practice nurse or physician)  
14 are approved.

15 Respondent's level of supervision and/or collaboration may include, but is not  
16 limited to the following:

17 (a) Maximum - The individual providing supervision and/or collaboration is  
18 present in the patient care area or in any other work setting at all times.

19 (b) Moderate - The individual providing supervision and/or collaboration is in  
20 the patient care unit or in any other work setting at least half the hours Respondent works.

21 (c) Minimum - The individual providing supervision and/or collaboration has  
22 person-to-person communication with Respondent at least twice during each shift worked.

23 (d) Home Health Care - If Respondent is approved to work in the home health  
24 care setting, the individual providing supervision and/or collaboration shall have person-to-  
25 person communication with Respondent as required by the Board each work day. Respondent  
26 shall maintain telephone or other telecommunication contact with the individual providing  
27 supervision and/or collaboration as required by the Board during each work day. The individual  
28 providing supervision and/or collaboration shall conduct, as required by the Board, periodic, on-

1 site visits to patients' homes visited by Respondent with or without Respondent present.

2           9.       **Employment Limitations.** Respondent shall not work for a nurse's  
3 registry, in any private duty position as a registered nurse, a temporary nurse placement agency, a  
4 traveling nurse, or for an in-house nursing pool.

5           Respondent shall not work for a licensed home health agency as a visiting nurse  
6 unless the registered nursing supervision and other protections for home visits have been  
7 approved by the Board. Respondent shall not work in any other registered nursing occupation  
8 where home visits are required.

9           Respondent shall not work in any health care setting as a supervisor of registered  
10 nurses. The Board may additionally restrict Respondent from supervising licensed vocational  
11 nurses and/or unlicensed assistive personnel on a case-by-case basis.

12           Respondent shall not work as a faculty member in an approved school of nursing  
13 or as an instructor in a Board approved continuing education program.

14           Respondent shall work only on a regularly assigned, identified and predetermined  
15 worksite(s) and shall not work in a float capacity.

16           If Respondent is working or intends to work in excess of 40 hours per week, the  
17 Board may request documentation to determine whether there should be restrictions on the hours  
18 of work.

19           10.       **Complete a Nursing Course(s).** Respondent, at her own expense, shall  
20 enroll and successfully complete a course(s) relevant to the practice of registered nursing no later  
21 than six months prior to the end of her probationary term.

22           Respondent shall obtain prior approval from the Board before enrolling in the  
23 course(s). Respondent shall submit to the Board the original transcripts or certificates of  
24 completion for the above required course(s). The Board shall return the original documents to  
25 Respondent after photocopying them for its records.

26           11.       **Violation of Probation.** If Respondent violates the conditions of her  
27 probation, the Board after giving Respondent notice and an opportunity to be heard, may set  
28 aside the stay order and impose the stayed discipline (revocation) of Respondent's license.

1           If during the period of probation, an accusation or petition to revoke probation has  
2 been filed against Respondent's license or the Attorney General's Office has been requested to  
3 prepare an accusation or petition to revoke probation against Respondent's license, the  
4 probationary period shall automatically be extended and shall not expire until the accusation or  
5 petition has been acted upon by the Board.

6           12.   **License Surrender.** During Respondent's term of probation, if she ceases  
7 practicing due to retirement, health reasons or is otherwise unable to satisfy the conditions of  
8 probation, Respondent may surrender her license to the Board. The Board reserves the right to  
9 evaluate Respondent's request and to exercise its discretion whether to grant the request, or to  
10 take any other action deemed appropriate and reasonable under the circumstances, without  
11 further hearing. Upon formal acceptance of the tendered license and wall certificate, Respondent  
12 will no longer be subject to the conditions of probation.

13           Surrender of Respondent's license shall be considered a disciplinary action and  
14 shall become a part of Respondent's license history with the Board. A registered nurse whose  
15 license has been surrendered may petition the Board for reinstatement no sooner than the  
16 following minimum periods from the effective date of the disciplinary decision:

17           (1)   Two years for reinstatement of a license that was surrendered for any  
18 reason other than a mental or physical illness; or

19           (2)   One year for a license surrendered for a mental or physical illness.

20           13.   **Physical Examination.** Within 45 days of the effective date of this  
21 Decision, Respondent, at her expense, shall have a licensed physician, nurse practitioner, or  
22 physician assistant, who is approved by the Board before the assessment is performed, submit an  
23 assessment of the Respondent's physical condition and capability to perform the duties of a  
24 registered nurse. Such an assessment shall be submitted in a format acceptable to the Board. If  
25 medically determined, a recommended treatment program will be instituted and followed by the  
26 Respondent with the physician, nurse practitioner, or physician assistant providing written  
27 reports to the Board on forms provided by the Board.

28   ///



1 If Respondent is determined to be unable to practice safely as a registered nurse,  
2 the licensed physician, nurse practitioner, or physician assistant making this determination shall  
3 immediately notify the Board and Respondent by telephone, and the Board shall request that the  
4 Attorney General's office prepare an accusation or petition to revoke probation. Respondent  
5 shall immediately cease practice and shall not resume practice until notified by the Board.  
6 During this period of suspension, Respondent shall not engage in any practice for which a license  
7 issued by the Board is required until the Board has notified Respondent that a medical  
8 determination permits Respondent to resume practice. This period of suspension will not apply  
9 to the reduction of this probationary time period.

10 If Respondent fails to have the above assessment submitted to the Board within  
11 the 45-day requirement, Respondent shall immediately cease practice and shall not resume  
12 practice until notified by the Board. This period of suspension will not apply to the reduction of  
13 this probationary time period. The Board may waive or postpone this suspension only if  
14 significant, documented evidence of mitigation is provided. Such evidence must establish good  
15 faith efforts by Respondent to obtain the assessment, and a specific date for compliance must be  
16 provided. Only one such waiver or extension may be permitted.

17 **14. Participate in Treatment/Rehabilitation Program for Chemical**  
18 **Dependence.** Respondent, at her expense, shall successfully complete during the probationary  
19 period or shall have successfully completed prior to commencement of probation a Board-  
20 approved treatment/rehabilitation program of at least six months duration. As required, reports  
21 shall be submitted by the program on forms provided by the Board. If Respondent has not  
22 completed a Board-approved treatment/rehabilitation program prior to commencement of  
23 probation, Respondent, within 45 days from the effective date of the decision, shall be enrolled in  
24 a program. If a program is not successfully completed within the first nine months of probation,  
25 the Board shall consider Respondent in violation of probation.

26 Based on Board recommendation, each week Respondent shall be required to  
27 attend at least one, but no more than five 12-step recovery meetings or equivalent (e.g., Narcotics  
28 Anonymous, Alcoholics Anonymous, etc.) and a nurse support group as approved and directed

1 by the Board. If a nurse support group is not available, an additional 12-step meeting or  
2 equivalent shall be added. Respondent shall submit dated and signed documentation confirming  
3 such attendance to the Board during the entire period of probation. Respondent shall continue  
4 with the recovery plan recommended by the treatment/rehabilitation program or a licensed  
5 mental health examiner and/or other ongoing recovery groups.

6           **15. Abstain from Use of Psychotropic (Mood-Altering) Drugs.** Respondent  
7 shall completely abstain from the possession, injection or consumption by any route of all  
8 controlled substances and all psychotropic (mood altering) drugs, including alcohol, except when  
9 the same are ordered by a health care professional legally authorized to do so as part of  
10 documented medical treatment. Respondent shall have sent to the Board, in writing and within  
11 fourteen (14) days, by the prescribing health professional, a report identifying the medication,  
12 dosage, the date the medication was prescribed, the Respondent's prognosis, the date the  
13 medication will no longer be required, and the effect on the recovery plan, if appropriate.

14           Respondent shall identify for the Board a single physician, nurse practitioner or  
15 physician assistant who shall be aware of Respondent's history of substance abuse and will  
16 coordinate and monitor any prescriptions for Respondent for dangerous drugs, controlled  
17 substances or mood-altering drugs. The coordinating physician, nurse practitioner, or physician  
18 assistant shall report to the Board on a quarterly basis Respondent's compliance with this  
19 condition. If any substances considered addictive have been prescribed, the report shall identify a  
20 program for the time limited use of any such substances.

21           The Board may require the single coordinating physician, nurse practitioner, or  
22 physician assistant to be a specialist in addictive medicine, or to consult with a specialist in  
23 addictive medicine.

24           **16. Submit to Tests and Samples.** Respondent, at her expense, shall  
25 participate in a random, biological fluid testing or a drug screening program which the Board  
26 approves. The length of time and frequency will be subject to approval by the Board.  
27 Respondent is responsible for keeping the Board informed of Respondent's current telephone  
28 number at all times. Respondent shall also ensure that messages may be left at the telephone

1 number when she is not available and ensure that reports are submitted directly by the testing  
2 agency to the Board, as directed. Any confirmed positive finding shall be reported immediately  
3 to the Board by the program and Respondent shall be considered in violation of probation.

4 In addition, Respondent, at any time during the period of probation, shall fully  
5 cooperate with the Board or any of its representatives, and shall, when requested, submit to such  
6 tests and samples as the Board or its representatives may require for the detection of alcohol,  
7 narcotics, hypnotics, dangerous drugs, or other controlled substances.

8 If Respondent has a positive drug screen for any substance not legally authorized  
9 and not reported to the coordinating physician, nurse practitioner, or physician assistant, and the  
10 Board files a petition to revoke probation or an accusation, the Board may suspend Respondent  
11 from practice pending the final decision on the petition to revoke probation or the accusation.  
12 This period of suspension will not apply to the reduction of this probationary time period.

13 If Respondent fails to participate in a random, biological fluid testing or drug  
14 screening program within the specified time frame, Respondent shall immediately cease practice  
15 and shall not resume practice until notified by the Board. After taking into account documented  
16 evidence of mitigation, if the Board files a petition to revoke probation or an accusation, the  
17 Board may suspend Respondent from practice pending the final decision on the petition to  
18 revoke probation or the accusation. This period of suspension will not apply to the reduction of  
19 this probationary time period.

20 17. **Mental Health Examination.** Respondent shall, within 45 days of the  
21 effective date of this Decision, have a mental health examination including psychological testing  
22 as appropriate to determine her capability to perform the duties of a registered nurse. The  
23 examination will be performed by a psychiatrist, psychologist or other licensed mental health  
24 practitioner approved by the Board. The examining mental health practitioner will submit a  
25 written report of that assessment and recommendations to the Board. All costs are the  
26 responsibility of Respondent. Recommendations for treatment, therapy or counseling made as a  
27 result of the mental health examination will be instituted and followed by Respondent.

28 ///

1           If Respondent is determined to be unable to practice safely as a registered nurse,  
2 the licensed mental health care practitioner making this determination shall immediately notify  
3 the Board and Respondent by telephone, and the Board shall request that the Attorney General's  
4 office prepare an accusation or petition to revoke probation. Respondent shall immediately cease  
5 practice and may not resume practice until notified by the Board. During this period of  
6 suspension, Respondent shall not engage in any practice for which a license issued by the Board  
7 is required, until the Board has notified Respondent that a mental health determination permits  
8 Respondent to resume practice. This period of suspension will not apply to the reduction of this  
9 probationary time period.

10           If Respondent fails to have the above assessment submitted to the Board within  
11 the 45-day requirement, Respondent shall immediately cease practice and shall not resume  
12 practice until notified by the Board. This period of suspension will not apply to the reduction of  
13 this probationary time period. The Board may waive or postpone this suspension only if  
14 significant, documented evidence of mitigation is provided. Such evidence must establish good  
15 faith efforts by Respondent to obtain the assessment, and a specific date for compliance must be  
16 provided. Only one such waiver or extension may be permitted.

17           **18. Therapy or Counseling Program.** Respondent, at her expense, shall  
18 participate in an on-going counseling program until such time as the Board releases her from this  
19 requirement and only upon the recommendation of the counselor. Written progress reports from  
20 the counselor will be required at various intervals.

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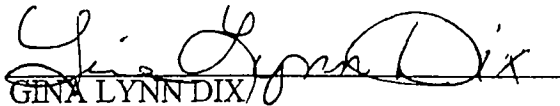
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ACCEPTANCE

I have carefully read the Stipulated Settlement and Disciplinary Order. I understand the stipulation and the effect it will have on my Registered Nurse License. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board.

DATED: Feb 5, 2005.


  
GINA LYNN DIX  
Respondent

ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Board of Registered Nursing of the Department of Consumer Affairs.

DATED: 4/12/05.

BILL LOCKYER, Attorney General  
of the State of California

  
REBECCA HEINSTEIN  
Deputy Attorney General  
  
Attorneys for Complainant

**Exhibit A**

**Accusation No. 2005-82**

1 BILL LOCKYER, Attorney General  
of the State of California  
2 REBECCA HEINSTEIN, State Bar No. 173202  
Deputy Attorney General  
3 California Department of Justice  
455 Golden Gate Avenue, Suite 11000  
4 San Francisco, CA 94102-7004  
Telephone: (415) 703-5604  
5 Facsimile: (415) 703-5480  
6 Attorneys for Complainant

7 **BEFORE THE**  
**BOARD OF REGISTERED NURSING**  
8 **DEPARTMENT OF CONSUMER AFFAIRS**  
9 **STATE OF CALIFORNIA**

10 In the Matter of the Accusation Against:

Case No. 2005- 82

11 **GINA LYNN DIX,**  
12 **a.k.a. GINA D'OCTAVIO,**  
13 **a.k.a. GINA LYNN MCKINNEY,**  
14 **a.k.a. GINA LYNN DOHAVIO**  
488 Rockport Circle  
Folsom, CA 95630

**A C C U S A T I O N**

15 California Registered Nurse License No. 566415  
16 Idaho Registered Nurse License No. N-28507  
17 Arizona Registered Nurse License No. RN  
127066

Respondent.

18 Complainant alleges:

19 **PARTIES**

20 1. Ruth Ann Terry, M.P.H., R.N. ("Complainant") brings this Accusation  
21 solely in her official capacity as the Executive Officer of the Board of Registered Nursing,  
22 Department of Consumer Affairs.

23 2. On or about April 25, 2000, the Board issued Registered Nurse License  
24 Number 566415 to Gina Lynn McKinney, a.k.a. Gina Lyn Dix, a.k.a. Gina D'Octavio, a.k.a.  
25 Gina Lynn Dohavio ("Respondent"). The license was in full force and effect at all times relevant  
26 to the charges brought herein and will expire on August 31, 2005, unless renewed.

27 ///

3. On or about April 13, 2004, the Arizona State Board of Nursing issued Registered Nurse License No. RN127066 to Respondent. The license will expire on June 30, 2008, unless renewed.

4. On or about July 8, 1999, the Idaho State Board of Nursing issued Registered Nurse License No. 28507 to Respondent. The license expired on August 31, 2001.

## JURISDICTION

5. This Accusation is brought before the Board of Registered Nursing ("Board"), under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

6. Section 2750 of the Code provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

7. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license.

8. Section 2811(b) of the Code provides, in pertinent part, that the Board may renew an expired license at any time within eight years after the expiration.

9. Section 2761(a) of the Code states, in pertinent part, that the Board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for unprofessional conduct .

10. Section 2762 of the Code states, in pertinent part, that in addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this chapter to do any of the following:

"(a) Obtain or possess in violation of law, or prescribe, or except as directed by a licensed physician and surgeon, dentist, or podiatrist administer to himself or herself, or furnish or administer to another, any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code or any dangerous drug or dangerous device as



defined in Section 4022.

"(b) Use any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or herself, any other person, or the public or to the extent that such use impairs his or her ability to conduct with safety to the public the practice authorized by his or her license.

11. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

## DRUGS

12. **"Vicodin,"** is a compound consisting of 5 mg. hydrocodone bitartrate also known as dihydrocodeinone, a Schedule III controlled substance as designated by Health and Safety Code section 11056(e)(4), and 500 mg. acetaminophene per tablet, and is a dangerous drug pursuant to Business and Professions Code section 4022.

**FIRST CAUSE FOR DISCIPLINE**

**(Using Controlled Substance to a Dangerous Extent)**

13. Respondent is subject to disciplinary action under section 2671(a) of the Code on the grounds of unprofessional conduct, as defined by section 2762(b) of the Code, in that Respondent used Vicodin, a controlled substance, to an extent or in a manner dangerous or injurious to herself or others and/or to the extent that such use impaired her ability to conduct with safety to the public the practice authorized by her license as evidenced by the following:

a. From approximately September 15, 2000 to September 19, 2000, Respondent was hospitalized in the psychiatric unit at Good Samaritan Hospital in San Jose, California. She was diagnosed with Acute Opiate (Vicodin) Induced Depression and Opiate (Vicodin) Dependence.

1                   b.       On or about January 31, 2001, Respondent enrolled in the Board's drug  
2 diversion program. While in the Board's diversion program, Respondent admitted using Vicodin  
3 on or about November 4, 2002. On or about November 14, 2002, Respondent was terminated  
4 from diversion as a public safety risk due to the relapse and other non-compliance.

5                                   **SECOND CAUSE FOR DISCIPLINE**

6   **(Use of a Controlled Substance)**

7                   14.       Respondent is subject to disciplinary action under section 2761(a) of the  
8 Code on the grounds of unprofessional conduct, as defined by section 2762(a) of the Code, in  
9 that on or about November 4, 2002, Respondent self-administered an unknown quantity of  
10 Vicodin, without direction from a licensed physician and surgeon, dentist, or podiatrist.

11   **PRAYER**


12                               WHEREFORE, Complainant requests that a hearing be held on the matters herein  
13 alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

14                               1.       Revoking or suspending Registered Nurse License No. 566415, issued to  
15 Respondent Gina Lynn McKinney, a.k.a. Gina Lyn Dix, a.k.a. Gina D'Ottavio, a.k.a. Gina Lynn  
16 Dohavio;

17                               2.       Ordering Respondent Gina Lynn McKinney, a.k.a. Gina Lyn Dix, a.k.a.  
18 Gina D'Ottavio, a.k.a. Gina Lynn Dohavio, to pay the Board of Registered Nursing the  
19 reasonable costs of the investigation and enforcement of this case, pursuant to Business and  
20 Professions Code section 125.3.

21                               3.       Taking such other and further action as deemed necessary and proper.

22 DATED: 11/1/04.

23  
24  
25   
26 RUTH ANN TERRY, M.P.H., R.N.  
27 Executive Officer  
28 Board of Registered Nursing  
Department of Consumer Affairs  
State of California  
Complainant